July 27, 2010

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Sent via email: jmartin2waterboards.ca.gov

Subject: San Luis & Delta-Mendota Water Authority Comments on Draft USBR-Regional Board Management Agency Agreement

Dear Mr. Martin:

Through this letter, the San Luis & Delta-Mendota Water Authority ("Water Authority" or "SLDMWA") on behalf of its member agencies provides comments on the draft Management Agency Agreement Between the Central Valley Regional Water Quality Control Board and the United States Bureau of Reclamation ("MAA"), as well as on Reclamation's proposed Action Plan, Compliance Evaluation and Monitoring Plan, and Compliance and Evaluation Monitoring Report which implement Reclamation's commitments under the MAA.

The Water Authority is a joint powers authority established under California's Joint Exercise of Powers Act (Government Code Section 6500, et seq.). The Water Authority is comprised of 29 public agency members, each of which contracts with the Bureau of Reclamation ("Reclamation") to receive water from the Central Valley Project ("CVP"), delivered through the Delta-Mendota Canal. Those member agencies provide CVP water to approximately 2,000,000 California residents, more than 1,000,000 acres of highly productive farmland on the Westside of the San Joaquin Valley and approximately 50,000 acres of private refuge land in the Grassland Water District.

The Water Authority supports the goal of improving water quality to the San Joaquin River so long as activities for that purpose are economically feasible and fairly implemented. Authority members who hold water service contracts have in recent years suffered significantly diminished CVP water supplies, in some years because of hydrology, but in all years due to regulatory constraints. Authority members also already participate in the implementation of water quality regulations, some through the Irrigated Lands Regulatory Program through the Westside San Joaquin Watershed Coalition and the Westlands Watershed Coalition, and others through the Grassland Bypass Project. Our members therefore have already suffered heavy burdens, both in terms of water supply and costs, in their efforts to improve water quality and meet regulatory requirements. We therefore have both considerable experience and expertise and also some concerns about the draft MAA and will appreciate your consideration of our comments below.

Sincerely,

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Executive Director

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GENERAL OVERVIEW:

As recognized by the San Joaquin River Water Quality Management Program, in which both the Central Valley Regional Board ("Regional Board") and the federal Bureau of Reclamation ("Reclamation") participated, salinity in the middle and lower San Joaquin River has two components: flow and load. Members of the San Luis & Delta-Mendota Water Authority ("Water Authority") participating in the Grassland Bypass Project have already made enormous reductions in their salt loads to the San Joaquin River, and are on a track to reduce those to zero. However, the Water Authority continues to be concerned that efforts to improve water quality conditions in the lower and middle San Joaquin River shift burdens to our members located on the Westside of the San Joaquin Valley and in the San Felipe Unit that fairly would be allocated to the parties diverting water from the River. The benefit of the San Joaquin River diversions go to the Friant Unit and other eastside contractors, while the delivery of offsetting substitute supplies to historic San Joaquin River water rights holders and refuges brings salt load into the San Joaquin Basin. Thus, efforts to allocate to Reclamation an obligation to address the Vernalis TMDL should not be focused solely on CVP water service contractors on the Westside of the San Joaquin Valley, either by Reclamation or by the Regional Board. Yet that is precisely what Section 1a of the proposed Master Agency Agreement (MAA) appears to do, by requiring Reclamation to provide dilution flows "to the degree that such flows can be provided under the 2008 and 2009 biological opinions on the operation of the Central Valley Project." That language appears to require use of all available water pumped through the Delta for dilution in the San Joaquin, subject not to senior water rights, other laws or contract obligations, but limited only by the terms of pumping restrictions under the terms of specific biological opinions. Requiring such flows is not consistent with state or federal law, Reclamation's contractual commitments or the terms Reclamation has set forth to implement its obligations under the MAA, and as more expressly described below, that section of the draft MAA must be revised.

Furthermore, Reclamation has acknowledged its ongoing water rights obligation to meet the Vernalis water quality objective for salinity, which it has been and will continue to meet. None of the documents associated with the MAA clarifies that Reclamation has any legal obligation to provide additional flows in the San Joaquin River to increase its assimilative capacity for salts. The Water Authority does not interpret PL 108-361 as requiring that recirculation flows be evaluated for purposes of Reclamation satisfying the TMDL, and Reclamation's documents do not identify authorizations for such use. Instead, in documents to implement the MAA, Reclamation agrees only to evaluate the availability of flows released for other purposes to provide such assimilative capacity, and the MAA cannot commit Reclamation to make additional flows available at the expense of south-of Delta contract water supplies.

Finally, the overwhelming logic is that Reclamation and others cannot cut off almost the entire flow of the San Joaquin River, replace its high quality water with water imported from a tidal estuary, and at the same time hugely reduce loads of salt that are presently exported from the San Joaquin Basin. While the action plan only addresses ongoing activities that may provide the possibility of increasing San Joaquin River salt assimilation capacity (and therefore does not include DMC recirculation), there needs to be a section that at least discusses in more depth the role of reducing imported salts by improving the quality of the

source water imported into that Basin through Delta conveyance improvements that would allow imported water to be diverted before becoming mixed with tidal flows.

COMMENTS ON DRAFT MAA

Specific Comments on Draft MAA

1. Agreement Section 1a states that Reclamation agrees "to provide mitigation and dilution flows to create assimilative capacity for salt in the San Joaquin River, to the degree that such flows can be provided under the 2008 and 2009 biological opinions on the operation of the Central Valley Project." Reclamation's Friant project and multiple projects on eastside tributaries have diverted almost all of the San Joaquin's flow, while Reclamation imports higher salinity water into the basin as a substitute supply and for refuges. Yet this purported agreement, which is not consistent with Reclamation's proposed Action Plan, could transfer to Reclamation's Westside water contractors the entire burden of "mitigating and diluting" salt loading in the San Joaquin River.

Not only does Section 1a appear to inappropriately and inequitably load salt load issues onto only the members of the Water Authority, it would lock in as the standard "to the degree that such flows can be provided under the 2008 and 2009 biological opinions on the operation of the Central Valley Project." Those biological opinions have been adjudged to violate federal statutes and are subject to change through remand, reconsultation or court order, so not only is the responsibility misplaced, the standard is not appropriately crafted. Other language in proposed section 1a of the agreement is very confusing. Does it mean flows for "mitigation and dilution" or that Reclamation will provide mitigation and will provide dilution flows? The Action Plan includes mitigation actions in the form of certain types of support, including for development of real time monitoring. It provides for dilution from New Melones to meet the salinity objective at Vernalis and the commitment to assess dilution available from flows released for different project purposes. Nothing in the Action Plan indicates that Reclamation will provide any specified flows for mitigation or that it will provide flows specifically "to create assimilative capacity for salt" in the San Joaquin River. We recommend that 1a be rewritten to reflect the actual Action Plan commitments, as follows:

"a. Reclamation agrees to continue to provide flows from New Melones required to meet Vernalis water quality objectives for salinity as required by its water rights permits and to assess the extent to which releases under other programs and activities involving Reclamation will create assimilative capacity for salt in the San Joaquin River; Reclamation further agrees to implement mitigation activities for salts imported through the Delta Mendota Canal, including initiating stakeholder efforts to develop a Real Time Program."

2. Agreement Section 1b states that Reclamation agrees "to track and report the percent of annual salt load reduction or mitigation achieved through Reclamation activities." To be consistent with what Reclamation indicates it will track (in percentage form) in the Compliance Evaluation and Monitoring Report, this should read: "dilution flow offset allocations and salt load reductions achieved under Reclamation's Action Plan." Reclamation's activities may trigger the dilution flow offsets, but it is the activities of others that achieve salt load reductions.

3. We reiterate our February, 2009, comments on the draft Compliance Evaluation and Monitoring Plan regarding the USBR taking credit for the salinity load reductions that the Grassland Basin Drainers are entitled to take credit for these reductions: "The Grassland Basin Drainers plan to take full credit for the reduction in salt discharge that has resulted from implementation of the Grassland Bypass Project (part of the Westside Regional Drainage Plan) as it will apply to compliance with the TMDL for salinity and boron in the lower San Joaquin River adopted in 2004. This reduction has been accomplished through conservation, recycling, reuse and treatment. In Water Year (WY) 2009 we estimated a 77% reduction in tons of salt that was discharged to the San Joaquin River since before WY 1995, before the Grassland Bypass Project (237,530 tons in WY 1995 compared to 55,556 tons in WY 2009). We do not object to the USBR getting appropriate credit until the Grassland Basin Drainers become regulated, so long as it does not jeopardize full credit to the area represented by the Grassland Basin Drainers."

4. Agreement Section 3 c. ii says "Continue to quantify the salt mitigation benefit of those activities and projects in Reclamation's Action Plan that are currently being implemented." "Salt mitigation benefit is nowhere defined. Substitute: "quantify the salt mitigation benefit measured through dilution flow offset allocations and salt load reductions" to be consistent with the Action Plan, Compliance Evaluation and Monitoring Plan and especially, Compliance Evaluation and Monitoring Report.

Specific Comments on Action Plan.

5. Reclamation's Salinity Management Plan (Revised 2010) (Action Plan) correctly states on page 11 that since its adoption in 1995, the water quality objective for salinity at Vernalis has not been exceeded. With the Grassland Bypass Project in place, there really is no threat that Reclamation will not continue to meet the objective, and with decreasing quantities of water from New Melones, due to ongoing salt load reductions. Nonetheless, the Regional Board has adopted and incorporated into the Basin Plan a TMDL for salt and boron at Vernalis. In lieu of directly resisting the obligation to comply with its purported responsibility to meet salinity load reductions by 2014-2018 (depending upon water year types) under the TMDL, Reclamation has entered into a Management Agency Plan with the Regional Board to describe cooperative efforts and has adopted the Action Plan to "continue to bring about improvements in water quality for the Basin." Reclamation's agreements in the MAA must be consistent with the Action Plan.

The first tools identified in the Action Plan consist of dilution: 1) from New Melones, including dilution incidental to fish flows; 2) through water acquisition incidental to VAMP flows and any other applicable b2 actions; and 3) potentially from San Joaquin River Restoration flows. The second set of tools is from load reductions. Although some grant programs that may or may not affect loads discharged are mentioned, load reduction by the Grassland Bypass Project is really the only clear load reduction mechanism. Further, it is clear from the all the dilution and load reduction measures described in the Action Plan that these accomplishments are through implementation of ongoing actions for other purposes, except in the case where Reclamation provides dilution flows from New Melones Reservoir for meeting Vernalis salinity, as required by its water rights permits.

The only activities indicating new initiatives in the Action Plan are in the "Mitigation" section. Notably, none of the deemed "mitigation" measures currently provides additional offsetting

flows or salt load reductions. Instead, Reclamation is 1) lending financial support to developing a real time monitoring plan that will have to be implemented by stakeholders; 2) participating in the C-V Salts initiative; 3) conducting an informational study designed to determine the relationship between the timing of deliveries and when incoming salt loads may actually be discharged; and 4) working with refuge management agencies on BMP's for salt load management that ultimately will be controlled by the refuge management agencies.

Reclamation's commitments in the MAA need to be consistent with these described activities, not something different.

6. Page 4, Water Acquisitions Program, Plan Elements:

First bullet: The acquisition of 800,000 AF for stream flows for salmon, etc. under CVPIA should be replaced with a reference to the amount of CVPIA (b)(2) water typically allocated and utilized on the Stanislaus River and any other San Joaquin River Basin flows. The rest is irrelevant.

Second bullet: The quantity of VAMP water that is part of the (b)(2) 800,000 AF should be clarified. Also see comment No. 14 regarding need for consistency between (b)(2) accounting statements and statements made in the Action Plan.

7. Page 5, Plan Effectiveness:

First bullet: clarify the quantity of VAMP water that is part of the b2 800,000 AF

Second bullet: omit statement or clarify the quantity of b2 water in addition to VAMP that is typically utilized in the San Joaquin Basin.

8. Page 6, Grassland Drainage Area Salinity Reduction

The second paragraph should be revised as follows: "Although drainage is managed primarily to control and reduce selenium discharges to Mud Slough, the drainage management also reduces other constituents associated with the drainage, including salinity. The goal of the 2019 Use Agreement is to have a zero discharge from agricultural irrigation into the San Joaquin River by the end of 2019, which will require physical treatment of the concentrated drainage. Based on available funds and certain incentives in the 2019 Use Agreement, the GBD have a goal to continue to meet current obligations for load reductions and to greatly reduce discharges to the San Luis Drain starting in 2015."

Plan Elements, First Bullet: "Land retirement" needs to be restated as "Voluntary land retirement" and relegated to a position lower on the list, since it is certainly not a primary priority of the GBD.

9. Page 11, final bullet under "Wetlands BMP Plan, Plan Elements": Clarify that "participation within the San Joaquin Valley Westside Coalition" means that state DF&G, Federal USF&WS and Grassland Water District and Grassland Resource Conservation

District wetlands participate in the Westside San Joaquin River Watershed Coalition to comply with the Irrigated Lands Regulatory Program. This basically gives these wetland areas a "permit" to discharge surface waters. The pay a negotiated rate based on them performing and reporting some of the required monitoring. .

Specific Comments on Compliance Evaluation and Monitoring Plan

10. Page 3: "Under Water Rights Decision 1641, Reclamation is to provide temporary mitigation and dilution flows to meet the Vernalis salinity and boron objectives, which are also the objectives of the Basin Plan Amendment."

This statement is incorrect and misleading. D-1641 does not assign Reclamation any responsibility for boron objectives. Also, D-1641 does not describe assigning Reclamation responsibility as "mitigation and dilution." Although one might be able to interpret some of the statements in D-1641 as saying dilution is part of the solution, the State Water Board did not directly include such statement. It clearly recognized numerous factors contributing to the salt concentration issues within the River. In fact, D-1641, in its discussion of the Vernalis Salinity Objectives (pages 83-4), states: "Westlands Water District (WWD) requested that the SWRCB not take any action that would affect its CVP water deliveries. If the SWRCB were to amend the CVP water right permits to require compliance with the southern Delta salinity objectives using only dilution water, there could be adverse effects on the water supply of CVP contractors south of the Delta, including WWD. Although releases of dilution water could help meet the southern Delta objectives, regional management of drainage water is the preferred method of meeting the objectives."

11. Page 3: "It is the total of the non-consumptive use release which provides the assimilative capacity at Vernalis and mitigates for increased salinity in the middle reaches of the San Joaquin River." and "New Melones Reservoir currently provides dilution flows to meet the Vernalis water quality objectives (WQOs) – essentially diluting salinity loads for the entire basin in real time. These flows offset salinity loads imported through the DMC."

Again, these statements are incorrect and misleading. The releases at New Melones meet requirements in the Stanislaus and offset storage of water at Friant.

12. Page 4: "Through Public Law 108-361, Reclamation is directed to develop and implement the Program to Meet Standards, in part to reduce the reliance on New Melones Reservoir to provide flows to meet water quality and fish objectives."

Public Law 108-361 directs Reclamation to develop and implement the program as a condition precedent to increasing diversion from the Delta [See Section 103(d)(2)(D)(i)]; it does not indicate that the Program is directed to meeting assigned TMDL responsibilities. Reclamation should clearly state all legal authorities upon which it relies as a basis for releasing or recirculating water for purposes of meeting the TMDL.

13. Page 4: "Reclamation accounts for these releases under Federal Energy Regulatory Commission requirements...."

What FERC requirements apply to Reclamation's Stanislaus River operations? Does this refer to FERC requirements on other dam operators? If so that should be clarified and stated.

14. Page 5: "Generally, flows that support fish outcomes have a higher management priority than water quality flows, therefore these flows are "accounted" for first (for the federal and state agencies mentioned)."

What does this mean? Many of the water quality flows serve fish? Is this statement consistent with how Reclamation conducts its (b)(2) accounting?

15. Page 7: "VAMP flows also provide dilution capacity for salinity, as they meet the "dilution flow" requirements of the Basin Plan Amendment, but they were included as flow in the setting of "design flows" as the basis for calculating load allocations.

If VAMP flows are part of the design flow for load allocations and also provide dilution capacity, then is Reclamation relying on VAMP to meet its TMDL obligations? The Plan should clarify that (1) VAMP is an experimental program that addresses flow (salinity benefits in April May are ancillary);(2) it is implemented pursuant to a settlement; and (3) it is to be conducted for a fixed period of time. Therefore, salinity benefits from VAMP flows are ancillary and may not be permanent.

16. Page 8, Heading, "DMC Recirculation – Provision of Dilution Water"

This should be rephrased as "Quantification of DMC Recirculation Pilot Programs" and should clarify: "DMC Recirculation is not yet an ongoing program included in the Action Plan. The following section describes the quantification methodology applied to previous DMC Recirculation Pilot Programs."

The Plan also says that Recirculation could be a tool added to the Plan. The quantification methodology example from 2008 in the Compliance Evaluation Monitoring Plan clearly demonstrates the high water cost vs. low dilution capability of DMC recirculation as a tool, compared to other dilution water sources. Since Reclamation's salt importation facilitates the Friant Project and serves wetland habitat purposes on behalf of the entire CVP, if this inefficient approach to increasing assimilative capacity were to be used, it must not be implemented in a manner than poses additional costs or water supply restrictions on Westside CVP contractors whose water supplies already bear the brunt of restrictions from b(2) and biological opinion implementation and who are themselves implementing measures to reduce salt loading into the San Joaquin River.

Further, if the future program of DMC recirculation is going to be included in the Compliance Evaluation and Monitoring Plan as a potential tool, at least the same level of consideration must be given to Reclamation's ongoing planning efforts through the Delta Habitat Conservation and Conveyance Plan. The concept that TMDL salt load requirements can be accomplished with most of the San Joaquin River flows diverted to the south, Reclamation taking those actions outlined in the Action Plan, and CVP water users in the Basin implementing salt load reductions to the extent mandated by the TMDL without simply storing salts in the Basin is simply unrealistic and unachievable. Real time use of

assimilative capacity is a tool requiring huge investments for major implementation and that more likely at best will nibble around the edges of the issue. The ultimate solution will likely involve improved Delta conveyance so that water imported through Reclamation's facilities brings less salt into the San Joaquin Basin, and the MAA and Reclamation's supporting documents should do more to acknowledge that point.

17. Page 11, Grassland Bypass Project, third sentence: "The next phase of the Grassland Bypass Project will include construction of treatment facilities to remove all discharge from the GDA by 2015." Correct to read: The final phase of the Grassland Bypass Project will include construction of treatment facilities needed to maintain the long-term benefits to agriculture through use of the drainage reuse area and to meet the selenium and salinity load reductions required in the 2019 Use Agreement."

18. Page 11, Westside Regional Drainage Plan: remove Broadview Water District and Widren Water District from list of participants; point out that they have been fallowed from irrigated agricultural production and therefore no longer participate.

19. Page 12, Quantification Methodology section states that SLDMWA estimates reduced salt load annually rather than making monthly estimates. However, the 2019 Use Agreement has both monthly and annual load limits for selenium and salinity. Reductions from pre-project (1995) conditions are made on an annual basis.

20. Page 13: "Starting in 2014, as SLDMWA agencies become regulated for salinity and boron, they will assume as much of the reduction as needed to meet their regulatory needs. Reclamation will reevaluate its ability to claim offsets not needed by SLDMWA agencies to meet their regulatory needs at that time."

As stated above, SLDMWA agencies are entitled to and do intend to claim their salinity reductions to meet regulations applicable to them.

21. Page 16, Real Time Management – Technical Support indicates that the Real Time Management Program "may also require the construction of new physical infrastructure to optimize the program." This is an enormous understatement of one of the largest issues on the viability of a RTMP – how to hold water in the absence of existing storage and flood control facilities and also the effect of stormwater runoff from the Westside, with its high burden of salts and other constituents, such as selenium, on the availability of dilution capacity in the San Joaquin River. These elements also need to be fleshed out in the Action Plan, along with plans for determining the economic feasibility of any such program.

Specific Comments on Compliance Evaluation and Monitoring Report

22. With regard to the salinity TMDL, data in the 2000-Present Compliance and Evaluation Monitoring Report show that Reclamation has consistently exceeded its own goal of offsetting through dilution flows or reducing DMC excess load (loads over the DMC allocation) by more than 25%, and at times has reduced or offset the load by more than 75%. It also notes that biological opinions or other operating constraints may reduce the water available for dilution flows. What Reclamation has not addressed is what actions

Reclamation can take to reduce "DMC excess load" at Vernalis to zero. There are no such known measures, and the document should include a statement acknowledging that the best identified tool for decreasing salt importation to the San Joaquin River Basin is to increase the quality of water imported, e.g., through development of Delta conveyance systems that divert water before it is degraded through tidal action.

23. The quantification methodology example from 2008 in the Compliance Evaluation Monitoring Plan clearly demonstrates the high water cost vs. low dilution capability of DMC recirculation as a tool, compared to other dilution water sources. This is logical, since the other sources are much lower in salinity and therefore can increase assimilative capacity far more efficiently than DMC recirculation.